

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

STEVEN WILLIAMS,

Plaintiff,

:

Case No. 3:04-cv-117

-vs-

Chief Magistrate Judge Michael R. Merz

:

DAYTON POLICE DEPARTMENT, et al.,

Defendants.

DECISION AND ORDER

This case is before the Court on Defendants' Motion for Sanctions and to Dismiss (Doc. No. 28) and Plaintiff's Response (Doc. No. 31).

The record of Plaintiff's deposition shows that he failed to answer proper questions put to him by Defendants' counsel and that he left the deposition without its being completed. On those facts the Court would be within its power to dismiss the case and order Plaintiff to pay Defendants' costs, as Defendants have requested. Nevertheless, Plaintiff has offered a plausible explanation for his behavior – his abscessed tooth on the day of the deposition – and has asked the Court to allow his case to proceed.

Generally the Sixth Circuit Court of Appeals disfavors dismissal as an initial sanction for failure to provide discovery. In an attempt to prepare the case for trial or dispositive motions, the Court will employ a less severe sanction. It is accordingly ORDERED:

1. Plaintiff's deposition shall be resumed in the jury room attached to Courtroom 4 at the United States Courthouse at 9:30 A.M. on Wednesday, September 7, 2005, and continue

until completed. The Court will be available to rule on any objections. Defendants' counsel shall provide a court reporter. If either party objects to this date, that party shall consult with the opposing party and obtain a new date, then confirm that date with DeAnna Perry, the Court's Judicial Assistant, at 512-1550. Plaintiff is advised that failure to attend and answer appropriate questions will result in dismissal of the case and imposition of monetary sanctions.

2. The discovery cut-off is extended solely for purpose of completion of this deposition.
3. The summary judgment deadline is extended to and including the thirtieth day after completion of the deposition.
4. Plaintiff shall pay the court reporter's attendance and transcription fee for the first deposition.

August 27, 2005.

s/ **Michael R. Merz**
Chief United States Magistrate Judge

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